### Util

#### The standard is maximizing expected wellbeing, or utilitarianism.

#### Prefer it—

#### Util is a lexical prerequisite to any other framework because actors can’t make decisions under other moral theories when their lives or bodily security are in danger because the necessary moral conditions are inhibited.

#### Actor Spec— States must use util because actors all have different obligations and there will always be tradeoffs involved in decision-making, but the only objective way to resolve tradeoffs is to maximize wellbeing.

#### Pleasure and pain are the starting point for moral reasoning—they’re our most baseline desires and the only things that explain the intrinsic value of objects or actions

**Moen 16**, Ole Martin (PhD, Research Fellow in Philosophy at University of Oslo). "An Argument for Hedonism." Journal of Value Inquiry 50.2 (2016): 267.

Let us start by observing, empirically, that **a widely shared judgment about intrinsic value** and disvalue **is that pleasure is intrinsically valuable and pain is intrinsically disvaluable**. On virtually any proposed list of intrinsic values and disvalues (we will look at some of them below), pleasure is included among the intrinsic values and pain among the intrinsic disvalues. This inclusion makes intuitive sense, moreover, for **there is something undeniably good about the way pleasure feels and something undeniably bad about the way pain feels**, and neither the goodness of pleasure nor the badness of pain seems to be exhausted by the further effects that these experiences might have. “Pleasure” and “pain” **are** here **understood inclusively**, as encompassing anything hedonically positive and anything hedonically negative. 2 The special value statuses of pleasure and pain are manifested in how we treat these experiences in our everyday reasoning about values. If you tell me that you are heading for the convenience store, **I might ask: “What for**?” This is a reasonable question, for when you go to the convenience store you usually do so, not merely for the sake of going to the convenience store, but for the sake of achieving something further that you deem to be valuable. You might answer, for example: “To buy soda.” This answer makes sense, for soda is a nice thing and you can get it at the convenience store. I might further inquire, however: “What is buying the soda good for?” This further question can also be a reasonable one, for it need not be obvious why you want the soda. You might answer: “Well, I want it for the pleasure of drinking it.” If I then proceed by asking “But what is the pleasure of drinking the soda good for?” the discussion is likely to reach an awkward end. **The reason is that the pleasure is not good for anything further; it is simply that for which going to the convenience store and buying the soda is good**. 3 As Aristotle observes: “**We never ask** [a man] **what** his **end is in being pleased, because we assume that pleasure is choice worthy in itself**.”4 Presumably, a similar story can be told in the case of pains, for if someone says “This is painful!” we never respond by asking: “And why is that a problem?” We take for granted that **if something is painful, we have a sufficient explanation of why it is bad**. If we are onto something in our everyday reasoning about values, it seems that **pleasure and pain are both places where we reach the end of the line in matters of value. Although pleasure and pain thus seem to be good candidates for intrinsic value and disvalue**, several objections have been raised against this suggestion: (1) that pleasure and pain have instrumental but not intrinsic value/disvalue; (2) that pleasure and pain gain their value/disvalue derivatively, in virtue of satisfying/frustrating our desires; (3) that there is a subset of pleasures that are not intrinsically valuable (so-called “evil pleasures”) and a subset of pains that are not intrinsically disvaluable (so-called “noble pains”), and (4) that pain asymbolia, masochism, and practices such as wiggling a loose tooth render it implausible that pain is intrinsically disvaluable. I shall argue that these objections fail. Though it is, of course, an open question whether other objections to P1 might be more successful, I shall assume that if (1)–(4) fail, we are justified in believing that P1 is true itself a paragon of freedom—there will always be some agents able to interfere substantially with one’s choices. The effective level of protection one enjoys, and hence one’s actual degree of freedom, will vary according to multiple factors: how powerful one is, how powerful individuals in one’s vicinity are, how frequent police patrols are, and so on. Now, we saw above that what makes a slave unfree on Pettit’s view is the fact that his master has the power to interfere arbitrarily with his choices; in other words, what makes the slave unfree is the power relation that obtains between his master and him. The difﬁculty is that, in light of the facts I just mentioned, there is no reason to think that this power relation will be unique. A similar relation could obtain between the master and someone other than the slave: absent perfect state control, the master may very well have enough power to interfere in the lives of countless individuals. Yet it would be wrong to infer that these individuals lack freedom in the way the slave does; if they lack anything, it seems to be security. A problematic power relation can also obtain between the slave and someone other than the master, since there may be citizens who are more powerful than the master and who can therefore interfere with the slave’s choices at their discretion. Once again, it would be wrong to infer that these individuals make the slave unfree in the same way that the master does. Something appears to be missing from Pettit’s view. If I live in a particularly nasty part of town, then it may turn out that, when all the relevant factors are taken into account, I am just as vulnerable to outside interference as are the slaves in the royal palace, yet it does not follow that our conditions are equivalent from the point of view of freedom. As a matter of fact, we may be equally vulnerable to outside interference, but as a matter of right, our standings could not be more different. I have legal recourse against anyone who interferes with my freedom; the recourse may not be very effective—presumably it is not, if my overall vulnerability to outside interference is comparable to that of a slave— but I still have full legal standing.68 By contrast, the slave lacks legal recourse against the interventions of one speciﬁc individual: his master. It is that fact, on a Kantian view—a fact about the legal relation in which a slave stands to his master—that sets slaves apart from freemen. The point may appear trivial, but it does get something right: whereas one cannot identify a power relation that obtains uniquely between a slave and his master, the legal relation between them is undeniably unique. A master’s right to interfere with respect to his slave does not extend to freemen, regardless of how vulnerable they might be as a matter of fact, and citizens other than the master do not have the right to order the slave around, regardless of how powerful they might be. This suggests that Kant is correct in thinking that the ideal of freedom is essentially linked to a person’s having full legal standing. More speciﬁcally, he is correct in holding that the importance of rights is not exhausted by their contribution to the level of protection that an individual enjoys, as it must be on an instrumental view like Pettit’s. Although it does matter that rights be enforced with reasonable effectiveness, the sheer fact that one has adequate legal rights is essential to one’s standing as a free citizen. In this respect, Kant stays faithful to the idea that freedom is primarily a matter of standing—a standing that the freeman has and that the slave lacks. Pettit himself frequently insists on the idea, but he fails to do it justice when he claims that freedom is simply a matter of being adequately (and reliably) shielded against the strength of others. As Kant recognizes, the standing of a free citizen is a more complex matter than that. One could perhaps worry that the idea of legal standing is something of a red herring here—that it must ultimately be reducible to a complex network of power relations and, hence, that the position I attribute to Kant differs only nominally from Pettit’s. That seems to me doubtful. Viewing legal standing as essential to freedom makes sense only if our conception of the former includes conceptions of what constitutes a fully adequate scheme of legal rights, appropriate legal recourse, justiﬁed punishment, and so on. Only if one believes that these notions all boil down to power relations will Kant’s position appear similar to Pettit’s. On any other view—and certainly that includes most views recently defended by philosophers—the notion of legal standing will outstrip the power relations that ground Pettit’s theory.

#### No intent-foresight distinction for states.

Enoch 07 Enoch, D [The Faculty of Law, The Hebrew Unviersity, Mount Scopus Campus, Jersusalem]. (2007). INTENDING, FORESEEING, AND THE STATE. Legal Theory, 13(02). doi:10.1017/s1352325207070048 https://www.cambridge.org/core/journals/legal-theory/article/intending-foreseeing-and-the-state/76B18896B94D5490ED0512D8E8DC54B2

The general difficulty of the intending-foreseeing distinction here stemmed, you will recall, from the feeling that attempting to pick and choose among the foreseen consequences of one’s actions those one is more and those one is less responsible for looks more like the preparation of a defense than like a genuine attempt to determine what is to be done. Hiding behind the intending-foreseeing distinction seems like an attempt to evade responsibility, and so thinking about the distinction in terms of responsibility serves 39. Anderson & Pildes, supra note 38. I will use this text as my example of an expressive theory here. 40. See id. at 1554, 1564. 41. For a general critique, see Mathew D. Adler, Expressive Theories of Law: A Skeptical Overview, 148 U. PA. L. REV. 1363 (1999–2000). 42. As Adler repeatedly notes, the understanding of expression Anderson & Pildes work with is amazingly broad, so that “To express an attitude through action is to act on the reasons the attitude gives us”; Anderson & Pildes, supra note 38, at 1510. If this is so, it seems that expression drops out of the picture and everything done with it can be done directly in terms of reasons. 43. This may be true of what Anderson and Pildes have in mind when they say that “expressive norms regulate actions by regulating the acceptable justifications for doing them”; id. at 1511. http://journals.cambridge.org Downloaded: 03 Aug 2014 IP address: 134.153.184.170 Intending, Foreseeing, and the State 91 to reduce even further the plausibility of attributing to it intrinsic moral significance. This consideration—however weighty in general—seems to me very weighty when applied to state action and to the decisions of state officials. For perhaps it may be argued that individuals are not required to undertake a global perspective, one that equally takes into account all foreseen consequences of their actions. Perhaps, in other words, individuals are entitled to (roughly) settle for having a good will, and beyond that let chips fall where they may. But this is precisely what stateswomen and statesmen—and certainly states—are not entitled to settle for.44 In making policy decisions, it is precisely the global (or at least statewide, or nationwide, or something of this sort) perspective that must be undertaken. Perhaps, for instance, an individual doctor is entitled to give her patient a scarce drug without thinking about tomorrow’s patients (I say “perhaps” because I am genuinely not sure about this), but surely when a state committee tries to formulate rules for the allocation of scarce medical drugs and treatments, it cannot hide behind the intending-foreseeing distinction, arguing that if it allows45 the doctor to give the drug to today’s patient, the death of tomorrow’s patient is merely foreseen and not intended. When making a policy-decision, this is clearly unacceptable. Or think about it this way (I follow Daryl Levinson here):46 perhaps restrictions on the responsibility of individuals are justified because individuals are autonomous, because much of the value in their lives comes from personal pursuits and relationships that are possible only if their responsibility for what goes on in the (more impersonal) world is restricted. But none of this is true of states and governments. They have no special relationships and pursuits, no personal interests, no autonomous lives to lead in anything like the sense in which these ideas are plausible when applied to individuals persons. So there is no reason to restrict the responsibility of states in anything like the way the responsibility of individuals is arguably restricted.47 States and state officials have much more comprehensive responsibilities than individuals do. Hiding behind the intending-foreseeing distinction thus more clearly constitutes an evasion of responsibility in the case of the former. So the evading-responsibility worry has much more force against the intending-foreseeing distinction when applied to state action than elsewhere.

#### Only consequentialism explains degrees of wrongness—if I break a promise to meet up with someone for lunch, it’s not as bad as breaking a promise to take a dying person to the hospital.

#### Even Kant himself concedes degrees of wrongness matter, but only consequentialism clearly explains it

Calder 05 explains [(Todd, University of Victoria, Department of Philosophy) “Kant and Degrees of Wrongness,” The Journal of Value Inquiry 39: 229–244, 2005] TDI

Most people would agree that there are degrees of wrongness. For instance, it seems that sadistic torture is a greater wrong than telling a white lie and that stealing a welfare check from a single mother is a greater wrong than stealing fifty cents from a billionaire. Degrees of wrongness can be easily accounted for on most consequentialist moral theories. According to consequentialists, an act is right, if the act promotes more good than its alternatives, and wrong if it does not. A consequentialist might contend that the worse the consequences, the greater the degree of wrongness. For example, if sadistic torture leads to more disvalue than telling a white lie, as it seems it would, sadistic torture is the greater wrong.

Kantian moral theorists cannot easily account for degrees of wrongness. For Kant, an act is wrong, if it is prohibited by the supreme principle of morality, the categorical imperative. It is not obvious how an act can be more or less prohibited by the categorical imperative. It seems that an act is either prohibited or it is not. The commonsense moral judgment that there are degrees of wrongness is a prima facie problem for a Kantian moral theorist.

It is surprising that this problem has gone unnoticed by Kantians and their critics. Moral theorists seem to have assumed that Kantian moral theory can account for degrees of wrongness. Kant himself seems to have made this assumption. For instance, in the Doctrine of Virtue he writes: “The greatest violation of a human being’s duty to himself regarded merely as a moral being (the humanity in his own person) is the contrary of truthfulness.”1

By calling lying the “greatest violation of a human being’s duty to himself” Kant seems to imply that lying is a greater wrong than other violations of a human being’s duty to himself. However, it is one thing for Kant to believe that his moral theory is able to accommodate degrees of wrongness and another for his theory actually to do so.

#### Extinction outweighs—

1. **Moral uncertainty means preventing extinction should be our highest priority.  
   Bostrom 12** [Nick Bostrom. Faculty of Philosophy & Oxford Martin School University of Oxford. “Existential Risk Prevention as Global Priority.” Global Policy (2012)]  
   These reflections on **moral uncertainty suggest** an alternative, complementary way of looking at existential risk; they also suggest a new way of thinking about the ideal of sustainability. Let me elaborate.¶ **Our present understanding of axiology might** well **be confused. We may not** nowknow — at least not in concrete detail — what outcomes would count as a big win for humanity; we might not even yet **be able to imagine the best ends** of our journey. **If we are** indeedprofoundly **uncertain** about our ultimate aims,then we should recognize that **there is a great** option **value in preserving** — and ideally improving — **our ability to recognize value and** to **steer the future accordingly. Ensuring** that **there will be a future** version of **humanity** with great powers and a propensity to use them wisely **is** plausibly **the best way** available to us **to increase the probability that the future will contain** a lot of **value.** To do this, we must prevent any existential catastrophe.

#### Extinction is the only impact that’s irreversible—forecloses any possibility of improvement in the future and subjects everyone to suffering

#### We have an ethical responsibility to future generations to save as many lives as possible

### AT Induction

#### Induction allows logical conclusions—no reason deducation is better

### AT Butterfly Effect

#### Util is only based on foreseen consequences

### At Pleasure and Pain Different

#### We know some things are objectively bad, like death and extinction

### Japan Prolif DA

#### The plan creates a space shock that weakens US-Japanese relations and creates a space race between Beijing and Tokyo.

Dean Cheng 9, Senior Research Fellow in the Asia Studies Center at the Heritage Foundation, Former Senior Analyst at the China Studies Division of the Center for Naval Analyses, Former Senior Analyst with Science Applications International Corporation, “Reflections On Sino-US Space Cooperation”, Space and Defense, Volume 2, Number 3, Winter 2009, <https://www.usafa.edu/app/uploads/Space_and_Defense_2_3.pdf>

Beyond the bilateral difficulties of cooperating with the PRC, it is also important to consider potential ramifications of Sino-US cooperation in space on the Asian political landscape. In particular, cooperation between Washington and Beijing on space issues may well arouse concerns in Tokyo and Delhi. Both of these nations have their own space programs, and while they are arguably not engaged in a “space race” with China (or each other), they are certainly keeping a close eye on developments regarding China.

Of particular importance is Japan. The United States relationship with Japan is arguably its most important in East Asia.

US interest in Japan should be self- evident. Japan hosts 47,000 US troops and is the linchpin for forward US presence in that hemisphere. Japan is the second largest contributor to all major international organizations that buttress US foreign policy.... Japan is the bulwark for US deterrence and engagement of China and North Korea—the reason why those countries cannot assume that the United States will eventually withdraw from the region.

For Japan, whose “peace constitution” forbids it from using war as an instrument of state policy, the United States is an essential guarantor of its security. Any move by the US that might undermine this view raises not only the prospect of weakening US-Japanese ties, but also potentially affecting Japan’s security policies.

In this regard, then, it is essential not to engage in activities that would undercut perceptions of American reliability. Such moves, it should be noted, are not limited to those in the security realm. For example, the Nixon administration undertook several initiatives in the late 1960s and early 1970s that rocked Tokyo-Washington relations, and are still remembered as the “Nixon shocks.” While some of these were in the realm of security (including Nixon’s opening to China and the promulgation of the Nixon Doctrine), the others were in the trade area. These included a ten percent surcharge on all imports entering the US and suspended the convertibility of the dollar (i.e., removed the US from the gold standard).

Part of the “shock” was the fundamental nature of these shifts. Even more damaging, however, was the failure of the Nixon Administration to consult their Japanese counterparts, catching them wholly off-guard. It took several years for the effects of these shocks to wear off. If the United States is intent upon expanding space relations with the PRC, then it would behoove it to consult Japan, in order to minimize the prospect of a “space shock.”

Failing to do so may well incur a Japanese reaction. The decision on the part of Japan to build an explicitly intelligence-focused satellite was in response to the North Korean missile test of 1999, suggesting that Tokyo is fully capable of undertaking space-oriented responses when it is concerned. That, in turn, would potentially arouse the ire of China. The tragic history of Sino-Japanese relations continues to cast a baleful influence upon current interactions between the two states. If there is not a “space race” currently underway between Beijing and Tokyo, it would be most unfortunate if American actions were to precipitate one.

#### Japan’s space program is currently non-offensive, but if Japan doubts that the US will fulfill its security commitments, it will develop offensive strike capabilities.

Fatton ’20 – Assistant Professor of International Relations at Webster University Geneva, Research Collaborator at the Research Institute or the History of Global Arms Transfer, Meiji University, Tokyo, and Adjunct Fellow at The Charhar Institute, Beijing

Lionel Fatton, “Japan’s Space Program Shifting Away from “Non-Offensive” Purposes?,” July 2020, https://www.ifri.org/sites/default/files/atoms/files/fatton\_japan\_space\_program\_2020.pdf

Japan’s space program has evolved greatly since the end of the Cold War, driven by a rapidly changing geopolitical environment and tailored by the emergence of an “intra-alliance hedging strategy”. Concerns about the United States’ readiness and ability to fulfill its security commitments have led Tokyo to enact security reforms to enhance its value as an ally while moving toward a more autonomous defense posture to prepare for the worst-case scenario of abandonment. This has transformed the Japanese space program from one based on the principle of peaceful use of space to a program aimed at ensuring national security through non-offensive means.

The security track of Japan’s space program currently aims at boosting the combat prowess of the Self-Defense Forces (SDF) in accordance with the non-offensive principle, and at maintaining in all circumstances the ability to use space-based assets for this purpose. Therefore, the country is not militarizing outer space beyond what is necessary to guarantee the proper functioning of the SDF.

Modern warfare puts a premium on intelligence and interoperability between different military elements. Information-gathering and maritime domain awareness devices, positioning services and military communications satellites provide Japan with better understanding of its environment, help anticipate and tackle threats, and allow greater interoperability between the SDF services. And, because national security increasingly depends on space operations, space situational awareness has taken prominence in Japan’s space program as a way to protect space assets against orbital debris and anti-satellite weapons.

Partly due to domestic legal, political and budget constraints, cooperation with international partners remains crucial for Japan to ensure national security and develop key space assets. With both the United States and India, Tokyo is collaborating on positioning services, maritime domain awareness and space situational awareness to help coordinate troop movements among allies, boost sea and ocean monitoring across the Asia- Pacific, and protect space-based assets. Japan has also partnered with European countries to jointly develop space technologies, pursue deep- space exploration, cooperate on positioning services, and set international norms for space activities.

Japan has yet to join the big three in the 21st century military space race. Compared to the United States, China and Russia, Japan is still inhibited by domestic constraints when it comes to military-related affairs, and thus the use of space for security purposes. But, although Japan’s space program is today almost purely non-offensive in nature, the intra-alliance hedging strategy implies a potential weaponization of space, beyond the non-offensive principle. This offensive use of space could materialize through the acquisition of strike capabilities, and the development of Japan’s own anti-satellite weapons or of active defense systems for space assets.

Whether Japan will follow this path depends on a variety of factors. On the domestic side, political stability will be decisive for the swift adaptation of Japan’s space program to its environment. Internationally, the evolution of the United States’ grand strategy and involvement in the Asia-Pacific will be the most influential factor. The more Tokyo doubts Washington’s ability and willingness to fulfill its security commitments, the more intense its intra-alliance hedging strategy becomes, further penetrating and transforming the Japanese space program.

#### Japan will develop offensive strike---nuclear war

Kelly C. Wadsworth 19, Non-Resident Kelly Fellow at Pacific Forum at the Center for Strategic & International Studies, PhD Student in International Security Studies at the University of Pittsburgh, MBA and MA in International Studies (Korea Studies) at the University of Washington, Former Visiting Fellow at the Japan Institute of International Affairs, BA in International Relations and East Asia from the University of California, Davis, “Should Japan Adopt Conventional Missile Strike Capabilities?”, Asia Policy, Volume 14, Number 2, April 2019, p. 83-87

American proponents of Japan obtaining a conventional missile strike capability interviewed for this research argued that the United States could use a more capable ally in the region to address the threat posed by heightened Chinese naval activity. While that prospect might be a tempting short-term fix to offset the U.S. Department of Defense budget cuts over the last decade, the long-term interests of the United States in maintaining regional stability should also be considered. In addition to the negative reactions of Beijing and Seoul, a Japanese offensive strike capability could decrease regional confidence in the credibility of U.S. power in Asia. As noted above, some experts argue that if Japan strengthens its offensive capability, such a move might be interpreted by neighbors reliant on the U.S. nuclear umbrella as a sign that Tokyo is losing confidence in the United States’ credibility.71 This could start a chain reaction that causes more U.S. allies to hedge with China or to develop their own strike capabilities, further increasing instability in Asia. *China*. China would likely be the most vocal in its disapproval of a Japanese conventional missile strike capability, potentially offering not just harsh words but also harsh actions that could further decrease regional stability in an already tense security environment. China expressed dissent when Japan considered a preemptive strike option against the North Korean threat in 2006, arguing that the move was “extremely irresponsible” and would severely interfere with international diplomatic efforts, aggravating tensions in Northeast Asia.72 Over ten years later, the regional environment is even more tense as a result of North Korea’s acquisition of nuclear weapons and China’s island reclamation efforts in the East and South China Seas. Support from Washington for Tokyo’s armament would likely fuel Beijing’s narrative that an aggressive and hegemonic United States is fixated on containing China and would be used to justify China’s own increased militarization. It would likely also end any chance of dialogue between Washington and Beijing on facilitating peaceful resolutions to regional territorial disputes. Brad Roberts points out that adopting strike capability would assist Japan in cases where its interests do not align with those of the United States, as in potential gray-zone conflicts. 73 However, the ensuing heightened mistrust between the alliance partners and China may work to increase the likelihood of a gray-zone conflict—such as the 2010 collision of Japanese and Chinese boats in disputed territory—possibly escalating into war. In addition, if Japan had a conventional missile strike capability that could be used to “preempt” a perceived imminent attack from China, Beijing would in turn be more likely to consider preemption of Japanese strike abilities, causing a premature escalation of the crisis that would undoubtedly draw in the United States. *South Korea*. Despite significant progress on U.S.-ROK-Japan trilateral security cooperation in recent years, Japan-ROK military relations remain increasingly tense, a situation that could easily spiral out of control if Japan adopted an offensive capability.74 When Japan, sparked by North Korea’s provocations in 2006, publicly debated the legality of a “preemptive strike” option, South Korean officials bluntly expressed their negative opinion of Japan’s intentions. A spokesperson for the Blue House secretariat, for example, remarked, “We have been alerted by this display of Japan’s inclination to aggression,” and that Japan was using the crisis “as an excuse to beef up their military.”75 South Koreans demonstrated a similar sentiment after Tokyo’s 2014 CSD proposal, with a 2015 poll showing that the majority of the public (56.9%) perceived Japan as “militaristic,” up 3.8 percentage points from the previous year.76 If Tokyo were to push forward with the discussion of adopting a conventional missile strike capability, South Korean public opinion would likely become even more unfavorable toward Japan. At a time when enhanced trilateral cooperation is important to deter the evolving threats in the region, Japan advancing legislation to allow for conventional missile strike capabilities would likely derail those efforts, especially if labeled “preemptive.” Such a move could even push Seoul to hedge with Beijing, as the ROK is increasingly reluctant to join any initiative perceived to be aimed at containing China.77 With China as South Korea’s largest trading partner and the United States as its greatest security ally, the ROK is not eager to choose between the two sides. *Southeast Asia*. Countries in Southeast Asia are watching the Trump administration closely to see where Washington will draw the line on China’s military rise and growing regional assertiveness, and many are already hedging accordingly. For example, countries such as Vietnam and the Philippines are increasing their own conventional arsenal and naval capabilities as a result of Washington’s “slow erosion of credibility” in the region during the Obama administration.78 Defense of Japan 2018 seems to have confidence in the Trump administration’s commitment to maintaining a powerful presence in Asia.79 However, as discussed earlier, if Japan were to pursue an offensive defense strategy, the Southeast Asian countries could see this as a sign of Tokyo’s loss of faith in the United States’ willingness to uphold its defense commitments. China’s seizure of the Scarborough Shoal from the Philippines in 2012 has already eroded these countries’ confidence in the U.S. security guarantee to some extent.80 Declining credibility and corresponding hedging—through either growing armament or alignment with China—could not only further increase tensions and heighten the risk of a gray-zone escalation but also lead to greater Chinese military assertiveness and dominance in the region. *Summary* Despite the seemingly unbalanced nature of the U.S.-Japan alliance, the argument for “balancing” the alliance with Japan’s development of an independent conventional missile strike capability does not take into account important repercussions that could undermine both regional stability and U.S. credibility. In addition, updated Japanese defense guidelines, such as CSD, already give Japan a “greater role” in global security. Unless future U.S. administrations drastically reduce the U.S. military presence in Asia, the benefit of a more equal alliance would not outweigh the potential costs of Japan’s adoption of a conventional missile strike capability. CONCLUSION The arguments supporting Japan’s acquisition of a conventional missile strike capability do not hold weight in the current regional, economic, and alliance environments. The development of such a capability is not a practical solution for Japan to abate the threat from the DPRK, and the move could be perceived by China and South Korea as facilitating a U.S. strategy of containment. Traditional restrictions on the Japanese defense budget would not practically allow the buildup of the military capabilities required for a conventional missile strike force, a restriction that cannot be changed without support from a military-wary public. At first glance, a “normal” Japan that is capable of contributing to U.S. deterrence efforts might seem appealing from an alliance perspective, especially after the 2010 U.S. defense budget cuts, and an increasingly threatening regional security environment. Yet, though the U.S.-Japan alliance may be unbalanced in terms of capabilities, the United States has broader interests in regional stability that will be better promoted if Japan maintains a purely defensive force. A strike-capable Japan might not only escalate an already tense regional standoff with China but also elicit a harsh response from other countries against Tokyo and Washington. It could also erode the credibility of the U.S. nuclear umbrella, potentially leading to increased militarization throughout Asia. If the environment surrounding any of these three arguments changes—for example, if the United States’ actions discredit its reliability to protect Japan under the alliance, if Japanese public support allows an increase in the JSDF’s budget, or if the United States can no longer maintain a credible military deterrence in Asia—Japan would have a strong argument to move forward with conventional missile strike capabilities. In that case, both parties should exercise prudence in their public communications of planned alliance cooperation on the matter and about how or why the alliance would choose to employ such abilities. Hawkish suggestions of the potential to increase U.S. dominance in the region should be avoided.81 China is rightfully wary of any reference to conventional prompt global strike. Such rhetoric coming from Japan or the United States combined with the decision to move forward on conventional missile strike capabilities could be considered a threatening signal by Beijing.82 Without calculated prudence in regional dialogues, even the discussion of Tokyo acquiring conventional missile strike capabilities could ultimately worsen the regional security environment rather than improve it.

### Case

### AT Ethics Apriori

#### Ethics begin a posteriori.

#### 1. Knowledge is based on experience – I wouldn’t know 2+2=4 without experience of objects nor the color red without some experience of color. We can’t obtain evidence of goodness without experience.

#### 2. Indifference – Even if there are apriori moral truths, I can choose to ignore them. Cognition is binding – if I put my hand on a hot stove, I can’t turn off my natural aversion to it.

### AT Uncertainty

#### No impact to uncertainty—we can act reasonably based on intuitions. Ths argument is a reason to prefer util—we also can’t be certain about moral theories being correct, but we objectively know death is bad.

### AT Is/Ought Gap

#### We can determine what’s good and bad based on experience.

### AT Action Theory

#### Their action theory collapses to consequentialism, which means that they link to their consequentialism offense.

### AT Universalizability

#### Always exceptions, util is best for universalizability because pleasure being good and pain being bad are universalizable.

#### Even if shmagency is impossible the objection still applies

Enoch 11 [(David, Philosophy Professor at Hebrew University) “Shmagency Revisited,” New Waves in Metaethics pp 208-233, 2011, https://link.springer.com/chapter/10.1057/9780230294899\_11] TDI

Perhaps an example can help here. Assume a philosopher – call her the paperskeptic – who believes that there's something intellectually corrupting about the papers analytic philosophers are so fond of reading and writing. Philosophical progress, she thinks, can only be achieved by writing books. The paper-frenzy is just a race to philosophical superficiality, and an incentive to substitute technical skills for deep philosophical insights. Being a conscientious professional, she writes this all down, presenting her analysis and arguments, culminating in the conclusion that philosophers should not write papers. But – in order for the example to be interesting – she writes this all down in the format of a paper, and proceeds to submit it to her friendly-neighborhood philosophy journal (where it is rejected, without comments, eleven months later).

Now, us paper-writing philosophers are eager to defeat the paper-skeptic's challenge. Does it suffice, in order to do that, to show that she has no stable ground to stand on while she's launching her attack, that in a sense she defeats herself because she wrote down her paper-skepticism in the form of a paper? Perhaps – though I doubt it – this shows that our paper-skeptic is in some sense in trouble. But this certainly does not show that we are out of trouble. If her arguments still work, then we – committed as we are to writing papers – are in trouble. We need a substantive answer to the challenge she puts in a sort-of self-defeating way. The challenge is real enough. It is real enough even if putting her paper-skepticism in the format of a paper is for some reason inescapable for her. Indeed, the challenge is real enough even if a paper-skeptic does not, or even cannot, exist. And so it is better to tell the story without anthropomorphizing the arguments at all. There are arguments attempting to show that we shouldn't be so seriously into writing papers. We need to deal with these arguments. It just doesn't matter whether there is a character – the paper-skeptic – who can help us make this debate more dramatic. And even if there is such a character, we should not mistake finding flaws with her for vindicating our paperwriting practices28. We should not, in a term I borrow from Crispin Wright (1991, 89), commit the mistake of the adversarial stance.

The analogy, I hope, is clear. Showing that the practical-reason-skeptic (the one asking "Why should I care about (e.g.) self-understanding?") has no safe grounds from which to launch his attack is neither here nor there. It does not even begin to vindicate practical reason. Thinking otherwise is like settling – in the discussion with the paper-skeptic – for noting that she's written a paper, without tackling her arguments against paper-writing head on. And so here too – as in the paper-skepticism case – we are better off avoiding the dramatic effects and anthropomorphizing the challenge. The challenge is a challenge for us, non-skeptic as we are29. It is we who have to come up with a theory of normativity that will be adequate (at least) by our own lights. It is we who must be convinced that agency is not normatively arbitrary (for us), that we do have, even upon reflection, reason to care about whatever it is that's constitutive of action and agency30, even if regardless of having or failing to have such a story, we inescapably do care about it. And so, it is us who are vulnerable to the shmagency challenge. Whether or not there is an agent (or a shmagent) who can stably embody this challenge is just beside the point.

### AT Categorical Imperatives

#### The categorical imperative fails to guide action and applying it relies on irresolvable empirical claims

Huemer 93 [(Michael, Professor of Philosophy at the University of Colorado, Boulder) “A Critique of Kantian Ethics,” Graduate Seminar at Rutgers, Spring 1993, https://spot.colorado.edu/~huemer/papers/kant1.htm] TDI

Third, and probably as a result of that problem, categorical imperative #1 isn't actually an imperative of the ordinary sort; it doesn't really tell us what actions to perform. Instead, it tells us what sort of maxims to act on, as if our deliberations typically were not about what actions to perform but about under what maxims to perform them. The categorical imperative represents a test on maxims or rules of conduct -- a necessary condition of their acceptability. This would be perfectly fine, if only the condition were strict enough to determine a unique set of acceptable rules, or, barring that, at least a greatly limited number. Given that Kant claims his categorical imperative is the sole principle of morality (the only categorical imperative, that is), we are entitled to expect that it determine the principles of morality uniquely, since if it leaves multiple incompatible sets of maxims open, we will have no basis for choosing among them, there being no other principles of morality on which to base the choice besides categorical imperative #1. Our expectations are disappointed. Take, once again, the utilitarian moral theory for an example. Surely it would be possible to will the universal maximization of happiness? The principle of utility, then, passes Kant's test; and, contrary to popular opinion, it turns out Kant's moral theory is consistent with utilitarianism. To my knowledge, no moral system has ever been articulated that would not pass the test of categorical imperative #1. This might at first be thought to be good, as a sign that the test is valid (it doesn't rule out anything that shouldn't be ruled out), but it also unfortunately means the condition is too weak to be of any use to us. How about a religious ethics, for another example? It surely seems possible to will universal conformity to the Bible (assuming the Bible is itself internally consistent). To be even more antagonistic to Kant, why wouldn't it be possible to will that everybody should just act on the basis of arbitrary whims? Or, why couldn't one will universal egoistic hedonism?

Kant claims that the last is impossible in his discussion of the duty of charity, but this brings us to his fourth difficulty: the applications Kant derives from CI #1 do not follow from it. He lists four duties:

a) The duty to keep promises. He claims universal promise-breaking would be impossible because it would mean no one would ever believe a promise made to him, and this would cause the institution of promising to collapse. But it is not logically impossible that promising could continue to exist. It is only an empirical hypothesis that if promises were generally broken then people would stop believing in them, and a further empirical hypothesis that if no one believed promises then people would stop making them. If we are allowed to consider empirical facts in morality (contra Kant's repeated insistences upon its a priori nature), these facts still do not show that people would be unable to carry on universally making and breaking promises -- only that they would probably not wish to.

Furthermore, it isn't clear that universal promise-breaking is what I would have to be able to will, if I plan to break a promise. For the maxim I act on may not be 'to break promises' but rather only 'to break promises when it would be especially difficult to keep them,' or even, 'to break promises when no one is likely to find out.' I may keep most of my promises but only break them when it is especially much in my interests to do so. Since this would be fairly rare, the institution of promising could survive the universalization of my maxim (in fact, such a maxim probably is nearly universally in practice already).

#### Kant can’t resolve value conflicts—collapses to util

Huemer 93 [(Michael, Professor of Philosophy at the University of Colorado, Boulder) “A Critique of Kantian Ethics,” Graduate Seminar at Rutgers, Spring 1993, https://spot.colorado.edu/~huemer/papers/kant1.htm] TDI

With regard to any possible action where people have conflicting interests -- the action serves one person's interests while harming another's -- it could be argued that the person who performs or refrains from the action is treating one of the parties as a means, no matter what he chooses to do. If I have ten dollars which I can give to either of two people (perhaps one of whom is myself), then whomever I give it to, I will, perhaps, be accused of treating the other person merely as a means -- or at the least, of failing to treat him as an end. If this is so, it is impossible to adhere to the categorical imperative. Moreover, since the reason given for CI #2 is the absolute and incomparable value of human beings, there is no way to make choices between people. Since one cannot compare the value of one person to that of another person, or to anything else, in a situation in which one is given a choice between different people (suppose there are a limited number of life rafts on the Titanic), there is nothing one can do. If values are incommensurable, we cannot say a hundred deaths are worse than one.

Frankly, I find this doctrine irrational. It ignores the fact that there are situations in which we are forced to compare values. We have to decide, for instance, how much money to spend on health care -- if we choose to take health as an incommensurable value, then there is little doubt it can consume the entirety of the gross national product of the country, and leave no time or resources for anything else. This is what any 'absolute value' in this sense will do: it will destroy everything else. For this reason it is logically impossible to have multiple absolute and overriding values -- they must come into conflict, in which case they can not both be treated as absolute. Moreover, the concept of incomparable values is just mathematically absurd -- the notion of a quantity that is neither greater nor less than, nor yet equal to, another quantity (both being quantities of the same thing, as value, or mass, etc.) is mathematically absurd. Kant appears to want this incoherent idea to justify his principle of never treating people as means. If he admitted comparison of values, then one might sometimes be required to sacrifice one person for the sake of others. If he merely said all people were equally valuable, then two people would be twice as valuable as one, so you could kill one person in order to save two. That, of course, is only on consequentialist assumptions. Kant's theory of the incomparability of values (his theory of 'dignity') is his way of undermining consequentialism. I think it is unsuccessful, although I do not think it is the only possible way of undermining consequentialism.

### AT Offense

#### The conclusion of Kant’s moral philosophy is political libertarianism

Otteson 09 [(James R., professor of philosophy and economics at Yeshiva University) “Kantian Individualism and Political Libertarianism,” The Independent Review, v. 13, n. 3, Winter, [2009](https://link.springer.com/article/10.1007/s10790-015-9506-9)] TDI

It is difficult to imagine a stronger defense of the “sacred” dignity of individual agency. Kantian individuality is premised on its rational nature and its entailed inherent dignity, and the rest of his moral philosophy arguably is built on this vision.1

Kant relies on a similarly robust conception of individuality in work other than his explicitly moral philosophy. The 1784 essay “An Answer to the Question: ‘What Is Enlightenment?’” (Kant 1991), for example, emphasizes in strong terms the threat that paternalism poses to one’s will. Kant argues that “enlightenment” (Aufklärung) involves a transition from moral and intellectual immaturity, wherein one depends on others to make one’s moral and intellectual decisions, to maturity, wherein one makes such decisions for oneself. One cannot effect this transition if one remains under another’s tutelage, and, as a corollary, one compromises another’s enlightenment if one undertakes to make such decisions for the other person—which, as Kant argues, is the case under a paternalistic government. Kant also writes in his 1786 essay “What Is Orientation in Thinking?” that “To think for oneself means to look within oneself (i.e. in one’s own reason) for the supreme touchstone of truth; and the maxim of thinking for oneself at all times is enlightenment” (1991, 249, italics and bold in the original). These passages are consistent with the position he takes in Grounding that a person who depends on others is acting heteronomously, not autonomously, and is to that extent not exercising a free moral will.

These passages also help to clarify Kant’s notion of personhood and rational agency by indicating some of their practical implications. For example, on the basis of his argument, one would expect him to argue for setting severe limits on the authority that any group of people, including the state, may exercise over others: because individual freedom is necessary both to achieve enlightenment and to exercise one’s moral agency, Kant should argue that no group may impinge on that freedom without thereby acting immorally.

Kant expressly draws this conclusion in his 1793 essay “On the Common Saying: ‘This May Be True in Theory, but It Does Not Apply in Practice’”: Right is the restriction of each individual’s freedom so that it harmonises with the freedom of everyone else (in so far as this is possible within the terms of a general law). And public right is the distinctive quality of the external laws which make this constant harmony possible. Since every restriction of freedom through the arbitrary will of another party is termed coercion, it follows that a civil constitution is a relationship among free men who are subject to coercive laws, while they retain their freedom within the general union with their fellows. (1991, 73, emphasis in original)

Kant insists on the protection of a sphere of liberty for each individual to self-legislate under universalizable laws of rationality, consistent with the formulation of the categorical imperative requiring the treatment of others “always at the same time as an end and never simply as a means” (1981, 36). This formulation of the categorical imperative might even logically entail the position Kant articulates about “right,” “public right,” and “freedom.” Persons do not lose their personhood when they join a civil community, so they cannot rationally endorse a state that will be destructive of that personhood; on the contrary, according to Kant, a person enters civil society rationally willing that the society will protect both his own agency and that of others. Robert B. Pippen rightly says that for Kant “political duties are a subset of moral duties” (1985, 107–42), but the argument here puts it slightly differently: political rights, or “dignities,” derive from moral rights, which for Kant are determined by one’s moral agency. Thus, the only “coercive laws” to which individuals may rationally allow themselves to be subject in civil society are those that require respect for each others’ moral agency (and provide for the punishment of infractions thereof) (see Pippen 1985, 121). When Kant comes to state his own moral justification for the state in the 1797 Metaphysics of Morals, this claim is exactly the one he makes: the state is necessary for securing the conditions of “Right”—in other words, the conditions under which persons can exercise their autonomous agency (see 1991, 132–35).

Consistent with this interpretation, Kant elsewhere endorses free trade and open markets on grounds that make his concern for “harmony” in the preceding passage reminiscent of Adam Smithian invisible-hand arguments. In his 1784 essay “Idea for a Universal History with a Cosmopolitan Purpose,” Kant writes: “Individual men and even entire nations little imagine that, while they are pursuing their own ends, each in his own way and often in opposition to others, they are unwittingly guided in their advance along a course intended by nature. They are unconsciously promoting an end which, even if they knew what it was, would scarcely arouse their interest” (1991, 41). This statement is similar to Smith’s statement of the invisible-hand argument.2 Kant proceeds to endorse some of the same laissez-faire economic policies that Smith advocated—for example, in his discussion in his 1786 work “Conjectures on the Beginning of Human History” of the benefits of “mutual exchange” and in his claim that “there can be no wealth-producing activity without freedom” (1991, 230–31, emphasis in original), as well as in his claim in the 1795 Perpetual Peace that “the spirit of commerce” is motivated by people’s “mutual self-interest” and thus “cannot exist side by side with war” (1991, 114, emphasis in original).3

Finally, although Kant argues that we cannot know exactly what direction human progress will take, he believes we can nevertheless be confident that mankind is progressing.4 Thus, in “Universal History” he writes:

The highest purpose of nature—i.e. the development of all natural capacities—can be fulfilled for mankind only in society, and nature intends that man should accomplish this, and indeed all his appointed ends, by his own efforts. This purpose can be fulfilled only in a society which has not only the greatest freedom, and therefore a continual antagonism among its members, but also the most precise specification and preservation of the limits of this freedom in order that it can co-exist with the freedom of others. The highest task which nature has set for mankind must therefore be that of establishing a society in which freedom under external laws would be combined to the greatest possible extent with irresistible force, in other words of establishing a perfectly just civil constitution. (1991, 45–46, emphasis in original)

Kant’s argument in this essay runs as follows: human progress is possible, but only in conditions of a civil society whose design allows this progress; because the progress is possible only as individuals become enlightened, and individual enlightenment is in turn possible only when individuals are free from improper coercion and paternalism, human progress is therefore possible only under a state that defends individual freedom. Kant believes that individuals have the best chance to be happy under a limited civil government, and he therefore argues that even such a laudable goal as increasing human happiness is not a justifiable role of the state: “But the whole concept of an external right is derived entirely from the concept of freedom in the mutual external relationships of human beings, and has nothing to do with the end which all men have by nature (i.e. the aim of achieving happiness) or with the recognized means of attaining this end. And thus the latter end must on no account interfere as a determinant with the laws governing external right” (“Theory and Practice,” 1991, 73, emphasis in original). The Kantian state is hence limited on the principled grounds of respecting agency; the fact that this limitation in his view provides the conditions enabling enlightenment, progress, and ultimately happiness is a great but ancillary benefit.

Thus, the positions Kant takes on nonpolitical issues would seem to suggest a libertarian political position. And Kant explicitly avows such a state. In “Universal History,” he writes: Furthermore, civil freedom can no longer be so easily infringed without disadvantage to all trades and industries, and especially to commerce, in the event of which the state’s power in its external relations will also decline. . . . If the citizen is deterred from seeking his personal welfare in any way he chooses which is consistent with the freedom of others, the vitality of business in general and hence also the strength of the whole are held in check. For this reason, restrictions placed upon personal activities are increasingly relaxed, and general freedom of religion is granted. And thus, although folly and caprice creep in at times, enlightenment gradually arises. (1991, 50–51, emphasis in original)

In “Theory and Practice,” Kant writes that “the public welfare which demands first consideration lies precisely in that legal constitution which guarantees everyone his freedom within the law, so that each remains free to seek his happiness in whatever way he thinks best, so long as he does not violate the lawful freedom and rights of his fellow subjects at large” and that “[n]o-one can compel me to be happy in accordance with his conception of the welfare of others, for each may seek his happiness in whatever way he sees fit, so long as he does not infringe upon the freedom of others to pursue a similar end which can be reconciled with the freedom of everyone else within a workable general law” (1991, 80, emphasis in original, and 74).

In a crucial passage in Metaphysics of Morals, Kant writes that the “Universal Principle of Right” is “‘[e]very action which by itself or by its maxim enables the freedom of each individual’s will to co-exist with the freedom of everyone else in accordance with a universal law is right.’” He concludes, “Thus the universal law of right is as follows: let your external actions be such that the free application of your will can co-exist with the freedom of everyone in accordance with a universal law” (1991, 133, emphasis in original).5 This stipulation becomes for Kant the grounding justification for the existence of a state, its raison d’être, and the reason we leave the state of nature is to secure this sphere of maximum freedom compatible with the same freedom of all others. Because this freedom must be complete, in the sense of being as full as possible given the existence of other persons who demand similar freedom, it entails that the state may—indeed, must—secure this condition of freedom, but undertake to do nothing else because any other state activities would compromise the very autonomy the state seeks to defend.

Kant’s position thus outlines and implies a political philosophy that is broadly libertarian; that is, it endorses a state constructed with the sole aim of protecting its citizens against invasions of their liberty. For Kant, individuals create a state to protect their moral agency, and in doing so they consent to coercion only insofar as it is required to prevent themselves or others from impinging on their own or others’ agency. In his argument, individuals cannot rationally consent to a state that instructs them in morals, coerces virtuous behavior, commands them to trade or not, directs their pursuit of happiness, or forcibly requires them to provide for their own or others’ pursuits of happiness. And except in cases of punishment for wrongdoing,6 this severe limitation on the scope of the state’s authority must always be respected: “The rights of man must be held sacred, however great a sacrifice the ruling power may have to make. There can be no half measures here; it is no use devising hybrid solutions such as a pragmatically conditioned right halfway between right and utility.

For all politics must bend the knee before right, although politics may hope in return to arrive, however slowly, at a stage of lasting brilliance” (Perpetual Peace, 1991, 125). The implication is that a Kantian state protects against invasions of freedom and does nothing else; in the absence of invasions or threats of invasions, it is inactive.

#### Libertarianism mandates a market-oriented approach to space—that negates

Broker 20 [(Tyler, work has been published in the Gonzaga Law Review, the Albany Law Review and the University of Memphis Law Review.) “Space Law Can Only Be Libertarian Minded,” Above the Law, 1-14-20, <https://abovethelaw.com/2020/01/space-law-can-only-be-libertarian-minded/>] TDI

The impact on human daily life from a transition to the virtually unlimited resource reality of space cannot be overstated. However, when it comes to the law, a minimalist, dare I say libertarian, approach appears as the only applicable system.

In the words of NASA, “2020 promises to be a big year for space exploration.” Yet, as Rand Simberg points out in Reason magazine, it is actually private American investment that is currently moving space exploration to “a pace unseen since the 1960s.” According to Simberg, due to this increase in private investment “We are now on the verge of getting affordable private access to orbit for large masses of payload and people.” The impact of that type of affordable travel into space might sound sensational to some, but in reality the benefits that space can offer are far greater than any benefit currently attributed to any major policy proposal being discussed at the national level. The sheer amount of resources available within our current reach/capabilities simply speaks for itself. However, although those new realities will, as Simberg says, “bring to the fore a lot of ideological issues that up to now were just theoretical,” I believe it will also eliminate many economic and legal distinctions we currently utilize today.

For example, the sheer number of resources we can already obtain in space means that in the rapidly near future, the distinction between a nonpublic good or a public good will be rendered meaningless. In other words, because the resources available within our solar system exist in such quantities, all goods will become nonrivalrous in their consumption and nonexcludable in their distribution. This would mean government engagement in the public provision of a nonpublic good, even at the trivial level, or what Kevin Williamson defines as socialism, is rendered meaningless or impossible. In fact, in space, I fail to see how any government could even try to legally compel collectivism in the way Simberg fears.

Similar to many economic distinctions, however, it appears that many laws, both the good and the bad, will also be rendered meaningless as soon as we begin to utilize the resources within our solar system. For example, if every human being is given access to the resources that allows them to replicate anything anyone else has, or replace anything “taken” from them instantly, what would be the point of theft laws? If you had virtually infinite space in which you can build what we would now call luxurious livable quarters, all without exploiting human labor or fragile Earth ecosystems when you do it, what sense would most property, employment, or commercial law make? Again, this is not a pipe dream, no matter how much our population grows for the next several millennia, the amount of resources within our solar system can sustain such an existence for every human being.

Rather than panicking about the future, we should try embracing it, or at least meaningfully preparing for it. Currently, the Outer Space Treaty, or as some call it “the Magna Carta of Space,” is silent on the issue of whether private individuals or corporate entities can own territory in space. Regardless of whether governments allow it, however, private citizens are currently obtaining the ability to travel there, and if human history is any indicator, private homesteading will follow, flag or no flag. We Americans know this is how a Wild West starts, where most regulation becomes the impractical pipe dream. But again, this would be a Wild West where the exploitation of human labor and fragile Earth ecosystem makes no economic sense, where every single human can be granted access to resources that even the wealthiest among us now would envy, and where innovation and imagination become the only things we would recognize as currency. Only a libertarian-type system, that guarantees basic individual rights to life, liberty, and the pursuit of happiness could be valued and therefore human fidelity to a set of laws made possible, in such an existence.

#### Property rights in space can be consistent with international law

Simberg 12 [(Rand, MSE in technical management from West Coast University, recognized as an expert in space transportation by the Office of Technology Assessment) “Homesteading the Final Frontier A Practical Proposal for Securing Property Rights in Space,” Competitive Enterprise Institute, April 2012, <https://cei.org/wp-content/uploads/2012/04/Rand-Simberg-Homesteading-the-Final-Frontier.pdf>] TDI

But is it true that any recognition of off-planet property claims is de facto a violation of the Outer Space Treaty? Not necessarily. For instance, one could argue that the existence of the Moon Treaty is in and of itself a refutation of the notion that the Outer Space Treaty outlaws private property in space, or else there would be no need for another treaty that essentially explicitly does so. And there is at least one potential loophole that could be exploited by appropriately worded legislation.

There are two key assumptions in the legal argument used by opponents of off-planet property claims: 1) that the recognition by a government would only recognize claims by its own citizens; and 2) that it would defend them by force. That need not necessarily be so. Under the treaty, it would in fact be possible for a government, or group of governments, to recognize the property claims of anyone who met specified conditions, regardless of their citizenship or nationality. Such cooperation would obviate the need for physical force to defend claims. The argument that the treaty permits individual property rights was actually made from the very beginning. In 1969, two years after the treaty went into force, the late distinguished space-law professor, Stephen Gorove, noted that under it, “[A]n individual acting on his own behalf or on behalf of another individual or a private association or an international organization could lawfully appropriate any part of outer space, including the [M]oon and other celestial bodies.”32 This clearly provides support for the concept of individual claims off planet under Article II.